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July 24, 1996

BY HAND DELIVERY

Mr. William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Communication in CC Docket 96-98

Dear Mr. Caton:

On behalf of the Telecommunications Carriers for Competition, in response to a request from the Common Carrier Bureau staff, I am providing the FCC with information regarding a vote taken by the Pennsylvania Public Utility Commission in open session on Thursday, July 18, in the unbundling case pending before that Commission. 1/

The Pennsylvania Commission voted to instruct the staff to draft a decision adopting the proposal set forth in MCI's Brief on Exceptions in that case regarding the scope of unbundling. Under that proposal, the PUC would require Bell Atlantic "to unbundle immediately, at a minimum, the loop, switch, and transport elements of its network as required by the Telecommunications Act of 1996." 2/ The July 18 Statement of Vice Chairman Crutchfield, upon which the vote was based, also specifically stated that "Bell's offer to unbundle the local loop and switch port is inadequate. The Company's proposal will stifle and may delay local

1/ MFS-Intelenet, Phase II, Pennsylvania Public Utility Commission Docket No. A310-203F0002, et al.

2/ Statement of Vice Chairman Lisa Crutchfield on Issue No. 2 (Scope of Unbundling), July 18, 1996, in Docket No. A-310213F0002, et al., citing MCI Exceptions at 6. The Commission's vote was based on Vice Chairman Crutchfield's statement.

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competition. New entrants to the local exchange market must have access to other network elements." 3/ The TCC in its comments in the referenced docket urged the FCC to mandate provision of an unbundled local switching element. 4/

I have enclosed, for the Commission's convenience, a copy of the July 18 Statement of Vice Chairman Crutchfield, upon which the vote of the PUC was based, and a copy of MCI's Brief on Exceptions, which sets forth (beginning at page 6) the proposal that was the subject of the PUC's vote. It is our understanding that the Pennsylvania Commission is expected to issue a written decision within the next few weeks.

I have hereby submitted two copies of this notice for the referenced proceeding to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided)

Please call if you have any questions.

Respectfully submitted,



Linda L. Oliver
Counsel for Telecommunications
Carriers for Competition

Enclosures

cc: Regina Keeney, Esq.
John Nakahata, Esq.
Lauren Belvin, Esq.
James Casserly, Esq.
Daniel Gonzalez, Esq.

3/ Id.

4/ Comments of Telecommunications Carriers for Competition, CC Docket No. 96-98, filed May 16, 1996, at 30-32. See also Reply Comments, filed May 30, 1996, at 16-17.

1996

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3285

**APPLICATIONS OF MCI INTELNET
OF PENNSYLVANIA, INC., TCG
PITTSBURGH, MCI METRO ACCESS
TRANSMISSION SERVICES, INC.,
EASTERN TELELOGIC, CORPORATION**

**PUBLIC MEETING-JULY 18, 1996
JUL-96-HIJ-1190
DOCKET NOS. 1-3102037002,
1-3102137002, 2-3102367002,
1-3120527002**

STATEMENT OF VICE CHAIRMAN LISA CRUTCHFIELD

Issue No. 1 Scope of Unbundling

Effective competition in the local exchange market requires network unbundling. One of the major issues in Phase II of these dockets is the level of unbundling of Bell Atlantic-Pennsylvania, Inc.'s ("Bell") network elements. The federal Telecommunications Act of 1996 ("Act") requires the unbundling of the local exchange network to advance facilities based local competition. 42 U.S.C. §251(c)(3).

Bell's offer to unbundle the local loop and switch port is inadequate. The Company's proposal will stifle and may delay local competition. New entrants to the local exchange market must have access to other network elements. MCI suggests that the Commission require Bell to "unbundle immediately, at a minimum, the loop, switch and transport elements of its network as required by the Telecommunications Act of 1996." MCI Exceptions, p. 6. I believe that this proposed level of unbundling is appropriate and recommend that the Commission order Bell to take such action.

7/18/96
DATE


LISA CRUTCHFIELD, VICE CHAIRMAN

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Richard D. Spiegelman

July 1, 1996

Via Hand Delivery

John G. Alford, Secretary
Pennsylvania Public Utility Commission
G-23 North Office Building
Harrisburg, PA 17120

Re: Applications of MFS Intelenet of Pennsylvania, Inc., MCI Metro Access Transmission Services, Inc., Teleport Communications Group Pittsburgh, and Eastern TeleLogic Corporation for a Certificate of Public Convenience and Necessity to Provide and Resell Telecommunications Services (Phase II); No. A-310203F0002; A-310213F0002; A-310236F0002; and A-310258F0002

Dear Secretary Alford:

Enclosed please find an original and nine copies of the Exceptions of MCI Telecommunications Corporation for filing in the above captioned action. Copies are being served upon the parties of record as evidenced on the attached Certificate of Service.

Very truly yours,


Richard D. Spiegelman

RDS:lad
Enclosures

cc: The Honorable Michael C. Schnierle
The Office of Special Assistants (w/disc)
(via hand delivery)
All Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of MFS Intelenet of Pennsylvania, Inc.	:	
	:	Docket No. A-310203F0002
	:	
MCI Metro Access Transmission Services, 310213F0002 Inc.	:	Docket No. A-
	:	
Teleport Communications of Pittsburgh	:	Docket No. A-
310236F0002	:	
	:	
Eastern Telelogic Corporation	:	Docket No. A-310258F0002

**EXCEPTIONS OF
MCI TELECOMMUNICATIONS CORPORATION**

MCI Telecommunications Corporation ("MCI") by its attorneys hereby files Exceptions to the Recommended Decision ("R.D.") of Administrative Law Judge Michael J. Schnierle ("ALJ"). In sum, MCI's Exceptions urge the Commission to order Bell to unbundle immediately, at a minimum, the loop, transport, and switching elements of its network as required by the Telecommunications Act of 1996 ("Act"); permit no limitation on the number of unbundled loops; order Bell to provide unbundled loops at total service long run incremental cost ("TSLRIC") as required by the Act and; order Bell to allow interconnection at any technically feasible point at the discretion of the competitive local exchange carriers ("CLECs") as required by the Act. The ALJ also recommends that the PUC take a wait and see attitude toward unbundling, interconnection, and other issues until the Federal Communications Commission ("FCC") has released its rules by August 8, 1996. To the contrary, MCI urges the

Commission to continue its progress toward local competition by establishing terms and conditions that are consistent with the Act.

At the federal level, MCI has urged the Federal Communications Commission ("FCC") to establish national rules, built upon actions taken by the states that are consistent with the Act.¹ Thus, to the extent that the Pennsylvania Public Utility Commission's ("PUC") Order in this proceeding is consistent with the Act, its actions should be used to formulate the national rules. Beyond partnering with the FCC to establish national rules that are in step with the Act's clear dictates, the PUC can expand upon the requirements established by the Act to address local conditions and to further promote competition in their respective regions. For example, the PUC has the authority under the Act to order Bell Atlantic - Pennsylvania, Inc. ("Bell") to further unbundle its network and to require Bell to provide additional points of interconnection. MCI urges the Commission to fashion additional requirements of Bell that go beyond even the direct mandates of the Act in order to best facilitate the movement from monopoly to competition.

To this end, the ALJ aptly applied the spirit and letter of the Act to Bell's proposal. In the R.D. in this proceeding, the ALJ correctly concluded as follows:

- Bell's unbundling proposal, which merely proposes

¹ Re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; CC Docket No. 96-98.

to unbundle the loop and the port, "has no vitality since passage of the Act"²;

- Bell's bonafide request process for additional unbundling is inconsistent with the Act³;
- Reciprocal unbundling should not be ordered⁴;
- Bell's inclusion of federal jurisdictional costs, loop testing costs, full implementation costs, gross receipts tax, and a charge for coordinated cutover costs in the price for unbundled loops should be rejected;⁵
- The Act requires Bell to offer its retail services at wholesale rates;⁶
- Bell's collocation proposal is "insufficient to comply with the Act";
- Bell's non-cost based charge for remote call forwarding ("RCF"), the interim number portability solution, should be rejected⁸;
- Bell's proposal to retain 100% of the access

² R.D. at 27.

³ R.D. at 34.

⁴ R.D. at 36.

⁵ R.D. at 41-63. MCI takes exception to the ALJ's acceptance of other costs above TSLRIC that were included in Bell's unbundled loop rates.

⁶ R.D. at 25.

⁷ R.D. at 38.

⁸ R.D. at 75.

charges for interexchange calls it forwards via RCF should be rejected⁹;

On these issues, the ALJ's recommendations are consistent with the Act and should be upheld by the Commission.

On the other hand, MCI excepts to the following ALJ's recommendations that:

- Did not order Bell to unbundle at a minimum the loop, switching, and transport, even though the ALJ correctly acknowledged that the Act clearly requires Bell to unbundle more than the loop and port as Bell proposed;
- Placed a limitation of 25 unbundled loops per LATA per co-carrier;
- Included joint and common costs, broadband network costs, and other costs in excess of the total service long run incremental cost of unbundled loops in the price for unbundled loops;
- Accepted Bell's proposal on points of interconnection that limits interconnection to individual end offices or at any access tandem switch.

As discussed in detail in MCI's testimony and briefs, the Act requires Bell to unbundle more than just the loop and the port; prohibits any restriction on access to Bell's network; requires Bell to charge cost-based rate for interconnection and

⁹ R.D. at 79-80.

network elements and; requires Bell to allow interconnection at any technically feasible point. MCI encourages the PUC to move ahead, consistent with the Act, on these important issues to local competition. MCI will discuss all of these deficiencies in the Recommended Decision below.

EXCEPTION 1: BELL SHOULD BE REQUIRED TO UNBUNDLE IMMEDIATELY, AT A MINIMUM, THE LOOP, SWITCHING, AND TRANSPORT ELEMENTS OF ITS NETWORK AS REQUIRED BY THE TELECOMMUNICATIONS ACT OF 1996.

Although the ALJ acknowledged that the Act requires Bell to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, he declined to order Bell to unbundle more than the loop and the port and, instead, deferred to the FCC the issue of further unbundling.¹⁰ MCI takes exception to the ALJ's recommendation on unbundling and advocates that, at a minimum, Bell should be required to unbundle immediately the loop, switching, and transport elements of its network.

In the Recommended Decision, the ALJ emphatically stated that the Act requires Bell to engage in extensive unbundling of its network, well beyond the unbundling proposal presented by Bell. The ALJ explained:

[T]he LECs' unbundling obligations include all features and functionalities, including both unbundled loop and unbundled switching elements, that other carriers may require in order to provide competing telecommunications services.... Moreover, in the NOPR, the FCC has stated its intent to order unbundling of the network well beyond that offered by BA-PA here. Specifically, the FCC has tentatively concluded that it should order the further unbundling of the loop, unbundling of switch capacity, local transport, special access facilities, signaling systems and databases, and AIN elements.¹¹

¹⁰ 47 U.S.C. 251(c)(3).

¹¹ R.D. at 28.

The ALJ also correctly rejected Bell's bonafide request proposal for unbundling beyond the loop and the port as contrary to the Act.¹²

Despite these progressive findings, the ALJ declined to order Bell to unbundle more than the loop and the port. He noted that "[b]ut for the proximity of the FCC rulemaking," he would recommend that Bell be directed to immediately develop a proposal to unbundle most, if not all, of the elements listed by AT&T, namely, three loop elements, two switching elements, three transport elements, and three signaling elements.¹³ There is no reason to await the FCC's action on this issue. MCI urges the Commission to order Bell to begin to unbundle all network elements immediately, which should initially include the loop, switching, and transport.

As explained in MCI's testimony and briefs, the Act requires unbundling of all of Bell's network elements. The Act requires that unbundled network elements be made available in a manner that allows requesting carriers to combine such elements in order to provide telecommunications services. As specified in the Act, those elements include, in the least, the local loop, local transport, and local switching.¹⁴ Indeed, unbundled network components should provide the set of network functions that are necessary for an entrant to generate the full array of

¹² R.D. at 32-34.

¹³ R.D. at 27-29.

¹⁴ 47 U.S.C. Section 271(c)(2)(B).

local exchange services that can be offered at the Class 5 end office. Specifically, at a minimum, unbundled network elements should be able to support basic business and residence local service, local usage, business services, ISDN, CLASS and customer calling features, local calling card service, announcement services, repair services, lifeline and relay services, intraLATA toll service, terminating and originating switched access for interstate and intrastate calls.¹⁵ The ALJ has offered no reason to delay unbundling. The fact that the FCC will soon release its rules on unbundling should not prevent this Commission from proceeding with pro-active steps toward local competition. The Commission should order Bell to initially unbundle the loop, transport, and switching. More complete network unbundling still remains necessary and should also be ordered by the Commission.

¹⁵ MCI M.B. at 11, citing MCI St. 1 at 7-8.

EXCEPTION 2: BELL SHOULD BE ORDERED TO PROVIDE UNBUNDLED LOOPS AT THEIR TOTAL SERVICE LONG RUN INCREMENTAL COST AS REQUIRED BY THE TELECOMMUNICATIONS ACT OF 1996.

The availability of unbundled elements is meaningless without proper pricing. In its Notice of Proposed Rulemaking, the FCC explained that the Act's requirement that network elements be priced at cost is necessary to prevent the incumbent LEC from discouraging competition through charging excessive rates and imposing unreasonable terms for access to its network.¹⁶ According to the FCC, proper pricing also encourages pricing discipline and allows the most efficient competitor to prevail in the marketplace.¹⁷ This is precisely why the Act requires cost-based pricing which, as the FCC clarified, "precludes states from setting rates by use of traditional cost-of-service regulation, with its detailed examination of historical carrier costs and rate bases."¹⁸ As the FCC accurately maintained, the setting of rates should be based on a forward-looking cost methodology that does not involve the use of an embedded rate base.¹⁹ That pricing standard is TSLRIC. Pricing elements at TSLRIC makes the unbundling option economically viable for new entrants and competitors.

¹⁶ Notice of Proposed Rulemaking in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC CC Docket No. 96-98, April 19, 1996 at 26-27 (hereinafter "NPRM").

¹⁷ Id.

¹⁸ NPRM at 41.

¹⁹ Id.

Furthermore, TSLRIC includes a reasonable profit as required by the Act.

In this case, Bell proposed rates that are far in excess of the total service long run incremental cost of the unbundled loops which will have dire consequences on the development of local competition. Curiously, while the ALJ noted the crucial nature of pricing loops to the competitive process, he failed to order Bell to price unbundled loops at TSLRIC as required by the Act. Furthermore, the ALJ noted that TSLRIC is the appropriate pricing standard for unbundled loops as opposed to the imputation standard advanced by MFS.²⁰ The ALJ understood clearly that unbundled loop rates that are in excess of Bell's retail dial tone line rate would stifle the competitive process. The ALJ explained:

This is an important point because BA-PA's proposed loop rates in many areas far exceed its dial tone line rates for the corresponding retail services. Obviously, if a competitor must pay BA-PA more for the loop than BA-PA charges for the corresponding retail service, it is unlikely that the competitor will be able to compete with BA-PA for the customer while making a profit. BA-PA manages to make a profit in this situation because it receives excess revenues from other services. The competitors may not be in a position to similarly subsidize unprofitable local exchange service.²¹

Despite the ALJ's understanding of the Act's requirements and the need for TSLRIC pricing, the ALJ recommended

²⁰ R.D. at 49.

²¹ R.D. at 48.

loop rates that exceed Bell's retail dial tone rates in that they included some portion of implementation costs, broadband network costs, and a mark up for joint and common costs. The ALJ further noted that Bell should be permitted to rebalance its rates which he believes is the most efficient way to eliminate internal subsidies.²²

The Act requires pricing of all network elements at total service long run incremental cost. The Commission should order Bell to provide unbundled loops and all network elements at direct economic cost.

²² R.D. at 48-49.

EXCEPTION 3: THE COMMISSION SHOULD PLACE NO RESTRICTION ON THE NUMBER OF UNBUNDLED LOOPS THAT ARE MADE AVAILABLE TO NEW ENTRANTS AND COMPETITORS.

The ALJ agreed with Bell's 25 loop per week per LATA per carrier limitation on unbundled loops. He argued the need for a phase-in period for a new service, that the limitation was only temporary, and that the CLECs could have lessened the need for a phase-in period by simply requesting Bell to engage in a trial run while this proceeding was pending.²³ This limitation is unreasonable, unsupportable, and in contravention of the Act.

As evidence of record reveals, Bell could not in any way justify its arbitrary loop limitation. In fact, Bell admitted that the 25 loop limitation has no practical, technical justification and was, in essence, plucked from the air. Bell could only offer that it considered loop unbundling to be a new service for which there needs to be a phase-in period and, hence, a loop limitation. While Bell readily referred to the Maryland loop test to justify the administrative burdens and expenses associated with providing unbundled loops in Pennsylvania (and hence the overstated unbundled loop rates) , Bell claimed that this test could not in any way enlighten it on the actual provisioning of loops in Pennsylvania. It is notable that Bell did not and could not explain how loop unbundling in Pennsylvania is any different from loop unbundling in Maryland. The ALJ imposed the 25 loop limitation on unbundled loops without addressing this inconsistency and omission.

²³ R.D. at 37.

It is not difficult to discern the real motive behind Bell's loop limitation, which is to delay as long as possible the advent of local competition. Bell acknowledged that this unreasonable limitation could prevent CLECs from providing service to its customers. Bell admitted that a CLEC would need at least 500 unbundled loops to provide service to a single, large customer. Thus, the immediate effect of even a temporary limitation on the availability of unbundled loops would be to delay the CLECs from providing service to a single customer. Coupled with Bell's pronouncement that it will not unbundle any of its network elements unless it is ordered to do so by this Commission, Bell's motive is clear.

The Act requires Bell to provide nondiscriminatory access to network elements such as unbundled loops.²⁴ The Commission should reject Bell's limitation on unbundled loop provisioning.

²⁴ 47 U.S.C. Section 251(c)(3).

**EXCEPTION 4: BELL SHOULD BE REQUIRED TO PERMIT INTERCONNECTION
AT ANY TECHNICALLY FEASIBLE POINT AS REQUIRED BY
THE TELECOMMUNICATIONS ACT OF 1996.**

The ALJ correctly concluded that the Act requires Bell to permit interconnection by CLECs at any technically feasible point.²⁵ At the same time, the ALJ noted that this proceeding predated the adoption of the Act.²⁶ Therefore, he concluded that for the interim, Bell's proposal to allow interconnection at the end office or tandem should be accepted and that parties should negotiate other points of interconnection with Bell.²⁷ MCI excepts to the ALJ's recommendation that parties negotiate other points of interconnection.

It is MCI's position, consistent with the Act, that CLECs should be treated as co-carriers, entitled to the same interconnection options as other interconnecting incumbent LECs. Interconnection should not be limited but rather should be provided in the most efficient manner possible. MCI proposes that Bell should be required to interconnect with the CLECs at any technically feasible point within Bell's network -- at an end office, tandem, or any other meet point -- that is designated by the CLEC. The Commission should order Bell to permit interconnection by CLECs wherever efficient and technically feasible, at the discretion of the CLECs.

²⁵ R.D. at 65.

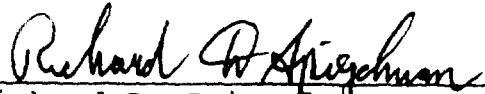
²⁶ R.D. at 66.

²⁷ Id.

WHEREFORE, for the foregoing reasons, MCI Telecommunications Corporation hereby respectfully requests that the Pennsylvania Public Utility Commission reverse the Recommended Decision of the Administrative Law Judge as noted in MCI's Exceptions. Specifically, MCI urges the Commission to order Bell to unbundle immediately the loop, switching, and transport elements of its network; place no restriction on the number of unbundled loops that can be purchased by CLECs; price unbundled loops at total service long run incremental cost and; provide interconnection at any technically feasible point.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION


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305 North Front Street, Suite 403
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(717) 236-4812

Dated: July 1, 1996

CERTIFICATE OF SERVICE

I, Richard D. Spiegelman, hereby certify that I have this day caused a true copy of MCI Telecommunications Corporation's Exceptions to be served upon the parties of record in Docket Nos. A-310203F0002, A-310236F0002; A-310213F0002; and A-310258F0002 in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the parties listed below.

Dated at Harrisburg, Pennsylvania, February 28, 1996.

VIA FEDERAL EXPRESS

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